

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SILVERADO ENTERPRISES, INC., et al.,

Plaintiffs,

v.

CITY OF SEATTLE, a municipal
corporation,

Defendant.

CASE No. 2:13-cv-00062-RAJ

ORDER

I. INTRODUCTION

This matter comes before the court on Plaintiffs' motion to remand the state law claims to state court pursuant to 28 U.S.C. § 1441(c)(2). Dkt. # 7. Defendant City of Seattle ("City") opposes the motion. Dkt. # 8. Having considered the parties' briefing and the record herein, the court GRANTS the motion to remand for the reasons stated below.

II. BACKGROUND

The underlying action involves a challenge to the continued existence of Ordinance 123997 enacted by the City in order to regulate nonconsensual towing. Dkt. # 1 (Ex. A to Not. of Removal; Compl.). The ordinance establishes maximum tow fee limits within the City and implements a licensing and enforcement scheme. Dkt. # 9 (Ex.

1 A to Seu Decl.). Plaintiffs originally filed the action in King County Superior Court on
 2 November 19, 2012, alleging that the ordinance is preempted under federal and state law,
 3 namely, the Federal Aviation Administration Authorization Act (“FAAAA”), 49 U.S.C. §
 4 14501(c)(2), Article XI, § 11 of the Washington Constitution, and RCW 46.55.240. Dkt.
 5 # 1 ((Not. of Removal) ¶¶ 1 & 4; Ex. A to Not. of Removal; Compl.).

6 On January 9, 2013, the City filed a notice of removal asserting that this court has
 7 federal subject matter jurisdiction pursuant to 28 U.S.C § 1331 and supplemental
 8 jurisdiction pursuant to 28 U.S.C § 1367. Dkt. # 1 (Not. of Removal) ¶ 4. Plaintiffs now
 9 seek to remand, contending that “the district court should sever from the action” state law
 10 claims and “remand the severed claims” back to state court for resolution, as mandated
 11 by 28 U.S.C. § 1441(c)(2). Dkt. # 7 at 1; Dkt. # 12 at 1-2 (Reply).

12 III. ANALYSIS

13 A civil case commenced in state court may, as a general matter, be removed by the
 14 defendant to federal district court, if the case could have been brought there originally.
 15 *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 134, 126 S.Ct. 704 (2005) (citing 28
 16 U.S.C. § 1441). Upon removal on the basis of subject matter jurisdiction, a court must
 17 verify that it does in fact have subject matter jurisdiction over at least one of the
 18 plaintiff’s claims and, if not, it must remand. *Lyons v. Alaska Teamsters Employer Serv.*
 19 *Corp.*, 188 F.3d 1170, 1171 (9th Cir. 1999). The court has subject matter jurisdiction
 20 where the action “aris[es] under the Constitution, laws, or treaties of the United States.”
 21 28 U.S.C. § 1331. A suit arises “under the Constitution, laws, or treaties of the United
 22 States,” if “the plaintiff’s well-pleaded complaint raises issues of federal law.” *City of*
 23 *Chicago v. Int’l College of Surgeons*, 522 U.S. 156, 163, 118 S.Ct. 523 (1997). Federal
 24 courts “have an independent obligation to ensure that they do not exceed the scope of
 25 their jurisdiction, and therefore they must raise and decide jurisdictional questions that
 26 the parties either overlook or elect not to press.” *Henderson ex rel. Henderson v.*
 27 *Shinseki*, 131 S.Ct. 1197, 1202, 179 L.Ed.2d 159 (2011).

Here, Plaintiffs urge the court to “sever” state law claims and remand these claims back to state court for resolution “pursuant to 28 U.S.C. § 1441(c)(2).” Dkt. # 12 at 1-2.

This removal statute provides that

(1) If a civil action includes--

(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), *and*

(B) *a claim not within the original or supplemental jurisdiction of the district court* or a claim that has been made nonremovable by statute, the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).

(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action *all claims described in paragraph (1)(B)* and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).

28 U.S.C. § 1441(c) (emphasis added). There is no question that Plaintiffs’ FAAAA claim arises under the laws of the United States and, as such, falls within this court’s original jurisdiction. Thus, the court must determine whether Plaintiffs’ remaining state law claims fall within the court’s original or supplemental jurisdiction,¹ *see* § 1441(c)(1)(B), or should be severed and remanded pursuant to § 1441(c)(2).

The court finds that original jurisdiction does not exist over Plaintiffs’ remaining claims because these claims allege state, rather than federal, causes of action, and because all parties are residents of Washington for purposes of diversity. *See* 28 U.S.C. §§ 1331 & 1332. The court finds, however, that supplemental jurisdiction exists over Plaintiffs’ remaining state law claims because these claims “are so related to [Plaintiffs’ federal claim] that they form part of the same case or controversy under Article III of the Constitution.” *See* 28 U.S.C. § 1367(a). The claims form part of the same case or

¹ There is no indication that Plaintiffs’ state law claims have been made nonremovable by statute.

1 controversy when they “derive from a common nucleus of operative fact,” such that a
 2 plaintiff would ordinarily be expected to try them in one judicial proceeding. *Finley v.*
 3 *United States*, 490 U.S. 545, 549, 109 S.Ct. 2003 (1989). Here, Plaintiffs’ complaint
 4 makes it clear that both federal and state law claims arise from the same “nucleus of
 5 operative facts,” namely, that the City ordinance is contrary to both Washington and
 6 federal law. *See* Dkt. # 1 at 10 (Ex. A to Not. of Removal; Compl.) ¶¶ 15 & 17.
 7 Accordingly, because supplemental jurisdiction over the remaining state law claims
 8 exists, 28 U.S.C. § 1441(c) is inapplicable.

9 However, given the novelty of some of the state law questions presented, the court
 10 declines to exercise supplemental jurisdiction over Plaintiffs’ state law claims. The court
 11 may decline to exercise supplemental jurisdiction if (1) the claim raises a novel or
 12 complex issue of State law, (2) the claim substantially predominates over the claim or
 13 claims over which the district court has original jurisdiction, (3) the district court has
 14 dismissed all claims over which it has original jurisdiction, or (4) in exceptional
 15 circumstances, there are other compelling reasons for declining jurisdiction.” 28 U.S.C. §
 16 1367(c).²

17 Here, Plaintiffs’ state law claims raise issues of a developing area of Washington
 18 law that have not been addressed by the state courts. No Washington court has published
 19 an opinion involving any aspect of the ordinance; nor has the Washington State Attorney
 20 General published any guidance as to its scope, meaning, or application.³ The parties did
 21

22 ² The court also finds that Plaintiffs’ state law claims appear to substantially predominate over
 23 the FAAAA claim in terms of scope of issues raised (*see* Dkt. # 1 (Ex. A to Not. of Removal;
 24 Compl.) ¶¶ 7-12) and the comprehensiveness of the remedy sought (*see* Dkt. # 1 (Ex. A to Not.
 25 of Removal; Compl.), Claims ¶¶ 1 & 2).

26 ³ In arguing against claims’ novelty, the City relies on an informal, unpublished opinion of the
 27 Washington Assistant Attorney General to a member of the Washington legislature, explaining
 that Chapter 46.55 RCW does not preempt a city “from enacting a local [nonconsensual tow fee]
 ordinance.” Dkt. # 8 at 5. Here, the City’s reliance is misplaced because the opinion does not
 address any aspects of the ordinance at issue and, as such, does not appear to provide guidance as
 to its scope, meaning, or application. *See* Dkt. # 9 (Ex. B to Seu Decl.).

1 not cite, and the court did not find, any state court cases interpreting or addressing any
 2 ordinance establishing maximum fee limits in conjunction with a licensing and
 3 enforcement scheme.⁴ It appears that the City ordinance, among other things, requires a
 4 towing company to obtain and maintain a license (*see* Dkt. # 9 at 15 (Ex. A to Seu Decl.)
 5 § 6.214.300) *in addition to* the registration certificate required under state law (*see* RCW
 6 46.55.020), requires a separate license *for each office location* and subjects each location
 7 to the annual \$500 license fee *not required* by state law (*see* Dkt. # 9 at 15 (Ex. A to Seu
 8 Decl.) § 6.214.270), authorizes levying *an additional* impound fee for the City’s revenue
 9 purposes (*see* Dkt. # 9 at 15 (Ex. A to Seu Decl.) § 6.214.350) in contrast to state law (*see*
 10 RCW 46.55.063), requires consent, if certain requirements are not met (*see* Dkt. # 9 at 15
 11 (Ex. A to Seu Decl.) § 6.214.230), while state law appears to regulate only nonconsensual
 12 tows,⁵ and it is not clear whether the ordinance includes applicable provisions required by
 13 state law (*see, e.g.,* RCW 46.55.240(1)(b)). Because the court believes that a state court
 14 is better equipped to first interpret the ordinance and its relationship with other state laws,
 15 the court chooses to decline exercising supplemental jurisdiction over Plaintiffs’ state law
 16 claims. Allowing the state court to embrace issues of state character under these
 17 circumstances “best serves the principles of economy, convenience, fairness, and
 18 comity.”⁶ *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 357, 108 S.Ct. 614 (1988).

22 _____
 23 ⁴ Cases cited by both parties are inapposite because they mostly involve issues of federal
 24 preemption or facts that are inapplicable to the facts here.

25 ⁵ Chapter 46.55 RCW governs the conduct of “registered tow truck operators” who, by
 26 definition, only tow “unauthorized” or “abandoned” vehicles. *See* RCW 46.55.010(1), (7), &
 27 (14).

⁶ Having found remand of Plaintiffs’ state law claims warranted on jurisdictional grounds, there
 is no need for the court to address alternative *Buford* and *Younger* abstention grounds for
 remand. *See* Dkt. # 8 at 6-9; Dkt. # 12 at 3-6. The court declines to “stay consideration of the
 federal issues” at this time because they are not adequately briefed.

IV. CONCLUSION

For all the foregoing reasons, Plaintiff's motion to remand is GRANTED. The Clerk of Court is DIRECTED to remand Plaintiffs' state law claims to King County Superior Court for further proceedings.

Dated this 29th day of May, 2013.

A handwritten signature in black ink, reading "Richard A. Jones", written over a horizontal line.

The Honorable Richard A. Jones
United States District Judge